



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Specialty Contractors, Inc.

**File:** B-258451

**Date:** January 24, 1995

Kenneth J. Morgan for the protester.  
Col. Thomas F. Brown, Maj. Virginia W. Haddad, and  
Lt. Col. John C. Mantini, Department of the Air Force, for  
the agency.  
Adam Vodraska, Esq., and James A. Spangenberg, Esq., Office  
of the General Counsel, GAO, participated in the preparation  
of the decision.

### DIGEST

A bidder's failure to acknowledge an amendment that changed the required color of roofing panels may not be treated as a minor informality under circumstances indicating that the color requirement is material.

### DECISION

Specialty Contractors, Inc. protests the proposed award of a contract to Sheckler Contracting by the Department of the Air Force under invitation for bids (IFB) No. F08620-94-B-0043, for the replacement of a roof. Specialty argues that Sheckler's bid should be rejected as nonresponsive, inasmuch as Sheckler failed to acknowledge amendment 1 to the IFB.

We sustain the protest.

The IFB was issued on July 20, 1994, to replace the roof on the munitions shop at Hurlburt Field, Florida. Amendment 1 was issued July 28. The amendment (1) changed the exterior color of the roofing panels from "dark bronze to match existing" to "medium bronze"; (2) deleted a requirement from the specifications that the roof system manufacturer be a member of the Metal Building Manufacturer's Association; and (3) clarified the required "dry film thickness" of the exterior coating of the roof panels.

Five bids were received by the August 19 bid opening date. Sheckler, with a bid of \$71,840, was the apparent low bidder; however, Sheckler did not acknowledge amendment 1. The contracting officer decided to treat this failure as a

minor informality. Specialty, the second-low bidder at \$79,576 protests that Sheckler's bid should have been rejected as nonresponsive for its failure to acknowledge the amendment and that award should be made to Specialty. The Air Force has not made award pending our resolution of the protest.

A bidder's failure to acknowledge a material amendment to an IFB renders the bid nonresponsive since absent such an acknowledgment the government's acceptance of the bid would not legally obligate the bidder to meet the government's needs as identified in the amendment. G.R. Sponaugle & Sons, Inc., B-257784, Nov. 7, 1994, 94-2 CPD ¶ 178. On the other hand, a bidder's failure to acknowledge an amendment that is not material is waivable as a minor informality. Federal Acquisition Regulation (FAR) § 14.405; DeRalco, Inc., 68 Comp. Gen. 349 (1989), 89-1 CPD ¶ 327. An amendment is material where it imposes legal obligations on a prospective bidder that were not contained in the original solicitation, Weatherwax Elec., Inc., B-249609, Oct. 26, 1992, 92-2 CPD ¶ 281, or if it would have more than a negligible impact on price, quantity, quality, or delivery. FAR § 14.405(d)(2); Star Brite Constr. Co., Inc., B-238428, Apr. 5, 1990, 90-1 CPD ¶ 373.

The agency states that the color change to the exterior of the roof panels that cover the roof surface was made "because the Hurlburt [Field] color standards require medium bronze." The agency does not argue that there is not a qualitative color difference between dark bronze and medium bronze, but states only that the amendment's color change is not material because it has no effect on price. In this regard, the Air Force asserts that the cost of either colored panel should be about the same because both dark bronze and medium bronze are standard colors.

However, even if an amendment's impact on price is trivial, the amendment is material if it affects the quality of performance in more than a negligible way. MIBO Constr. Co., B-224744, Dec. 17, 1986, 86-2 CPD ¶ 678; see American Sein-Pro, B-231823, Aug. 31, 1988, 88-2 CPD ¶ 209. The color of an item can be a material requirement, as can compliance with a pre-existing color scheme or other aesthetic considerations. Products for Indus., B-257463; B-257463.2, Oct. 6, 1994, 94-2 CPD ¶ 128 (descriptive literature identifying color of workbenches and cabinets as "gray" properly resulted in rejection of bid where IFB listed "black" as the required color); Lea Britt Enters., B-232248, Dec. 5, 1988, 88-2 CPD ¶ 557 and Wyoming Weavers, Inc., B-229669.3, June 2, 1988, 88-1 CPD ¶ 519 (bids containing bid samples whose color did not match the

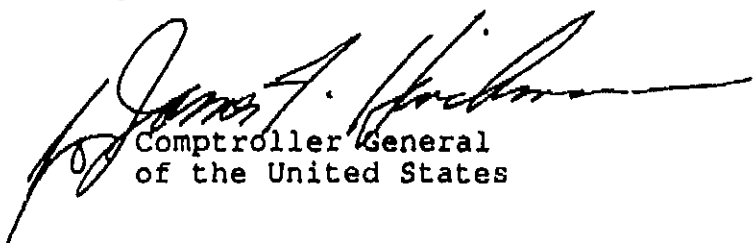
designated government color standards were properly rejected as nonresponsive); see Diverstech Co., B-257395, July 27, 1994, 94-2 CPD ¶ 61 (material specification requiring that dishwashers for military family housing be white in color); Electronic Office Env'ts, B-254571, Dec. 27, 1993, 93-2 CPD ¶ 342 (bid properly rejected for not offering same style of file cabinets required for more uniform look).

Here, the Air Force required the color change to meet its base color standards, and acknowledges that dark bronze and medium bronze are different, albeit standard, colors. The Air Force has not indicated that the actual color of the roof of the munitions building is a matter of no import; the amendment itself suggests that medium bronze is required to meet the agency's aesthetic requirements, and the IFB requires that the work completed by the contractor "meet the aesthetic . . . properties" required by the specifications. Moreover, the contracting officer, while asserting that the amendment has no meaningful effect on price, quality, quantity, or delivery, affirms the Air Force's intention to insist on medium bronze panels--he states that, rather than waive the low bidder's failure to acknowledge the amendment, "it is in the best interest of the Government to give the low bidder an opportunity to cure this deficiency."

On this record, therefore, we view the amendment as material; without acknowledging the amendment, Sheckler's bid does not represent a clear commitment by that firm to furnish "medium bronze" roofing panels that meet the Hurlburt Field color standards. The bid is therefore nonresponsive.<sup>1</sup> MIBO Constr. Co., supra.

We recommend that the Air Force make award to Specialty, the second low bidder, if that bidder is otherwise eligible. We also find that Specialty is entitled to recover its costs of filing and pursuing this protest. 4 C.F.R. § 21.6(d)(1). Specialty should file its claim, detailing and certifying the time expended and costs incurred, directly with the Air Force within 60 days after receipt of this decision. 4 C.F.R. § 21.6(f)(1).

The protest is sustained.



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<sup>1</sup>Since the color change portion of the amendment was material, we need not decide the materiality of the other changes made by the amendment.